

United States Courts
Southern District of Texas
FILED

MAY 19 2005

BD

Michael N. Milby, Clerk of Court

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

GLENN SHEPHERD, THOMAS SPJUT,
GREGORY D. BROWN, T.F. BIELSKI,
TIMOTHY D. BAYNES, VICTOR S.
GARZA, C.J. KLAUSNER, MITCHELL W.
CRENSHAW, CHARLES D. HURLEY,
SPENCER M. COKER, RAMUDO
MANTALVO JR., J.D. WALTMON, RAY
A. OLESEN, ROGELIO RODRIGUEZ,
RAMSEY VELEZ, DON SIMERLY,
ANDREW J. WASHINGTON, CRAIG
BIGGER, DONALD J. CULAK, RICHARD
V. WILSON, MICHAEL L. SKILLERN,
DEREK P. FOLLIS, JAMES L. CROWSER
OSCAR H. ORTEGON SR., RONALD L.
DAVISON, THERESA CURRY, DAN
SPJUT, E.L. WHITAKER, FRANCES
ORTIZ, THOMAS P. NULL

Plaintiffs,

VS.

THE CITY OF HOUSTON,
Defendant.

H 05 - 1793

CIVIL ACTION NO. _____

NOTICE OF REMOVAL

NOTICE OF REMOVAL

PLEASE TAKE NOTICE that Defendant, City of Houston, hereby removes to this Court civil action No. 2005-24125 from the 334th Judicial District Court of Harris County for the reasons delineated below. Defendant requests and consents to this removal.

I.

BACKGROUND

1. On April 11, 2005 an action was commenced in the 334th Judicial District Court of Harris County, entitled Glenn Shepherd, Thomas Spjut, Gregory D. Brown, T. F. Bielski, Timothy D. Baynes, Victor S. Garza, C.J. Klausner, Mitchell W. Crenshaw, Charles D. Hurley, Spencer M. Coker, Ramudo Mantalvo Jr., J. D. Waltmon, Ray A. Olesen, Rogelio Rodriguez, Ramsey Velez, Don Simerly, Andrew J. Washington, Craig Bigger, Donald J. Culak, Richardwilson, Michael L. Skillern, Derekp. Follis, James L. Crowser, Oscar H. Ortegon Sr., Ronald L. Davison, Theresa Curry, Dan Spjut, E. L. Whitaker, Frances Ortiz,

Thomas P. Null vs. City of Houston, Defendant, under Cause Number 2005-24125. See Exhibit 1.

2. The first date upon which Defendant received a copy of the said petition was April 19, 2005, when Defendant was served with a copy of the said petition and a citation from the said State court. A copy of the citation is attached hereto. See Exhibit 2.
3. This is a civil action of which this Court has original jurisdiction under 28 U.S.C. §1331, and is one which may be removed to this Court by Defendant pursuant to the provisions of 28 U.S.C. §1441(b) in that it allegedly arises under the "Fair Labor Standards Act" (FLSA) 29 U.S. C. § 201-209.
4. The City is the only Defendant in this case.

II.

JURISDICTION AND VENUE

5. Venue of this removed action is prescribed by 28 U.S.C. §1446 and properly lies in the Houston Division of the Southern District of Texas, the district division where Plaintiffs' civil action was filed.

III.

THE PARTIES

6. The Plaintiffs are residents of the United States who are employed by Defendant the City of Houston in Houston, Harris County, Texas.
7. Defendant, City of Houston, Texas, is a home rule city situated in Harris County, Texas.

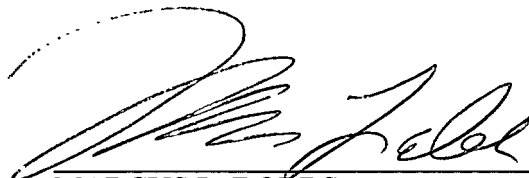
IV.

REMOVAL

8. By virtue of the time limits imposed under the statute governing the procedure for removal, this notice of removal is timely under 28 U.S.C. §1446(b).
9. Pursuant to Local Rule 81, copies of all state court pleadings and the docket sheet are attached hereto.
10. To Defendant's knowledge, there are no other active pleadings or orders other than what has

been cited in this Notice at the time of this removal.

Dated: May 19, 2005.



MARCUS L. DOBBS
Senior Assistant City Attorney
SBN 05921500
P.O. Box 1562
Houston, TX 77251
(713) 247-1517 (Voice)
(713) 247-1017 (FAX)

ATTORNEY-IN-CHARGE FOR
DEFENDANT

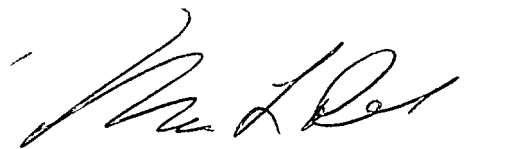
OF COUNSEL:

ARTURO G. MICHEL
City Attorney

CONSTANCE K. ACOSTA
Senior Assistant City Attorney

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Defendant City of Houston's Notice of Removal has been forwarded to Michael Kerensky, The Kerensky Law Firm, 5300 Memorial, Suite 950, Houston, Texas 77007, by depositing a copy of same in the U. S. Mail, certified return receipt requested, on 19th day of May, 2005.



MARCUS L. DOBBS

TAB 1

2005-24125

CAUSE NO. _____

ASSESSED	Page 1 of 6
ENTERED	
VERIFIED	

GLENN SHEPHERD, THOMAS SPJUT,
 GREGORY D. BROWN, T.F. BIELSKI,
 TIMOTHY D. BAYNES, VICTOR S. GARZA,
 C.J. KLAUSNER, MITCHELL W.
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 RAY A. PEARSON, JERRY MONTGOMERY,
 JEFFREY A. OLESEN, ROGELIO RODRIGUEZ,
 RAMSEY VELEZ, DON SIMERLY,
 ANDREW J. WASHINGTON, CRAIG BIGGER,
 DONALD J. CULAK, RICHARD V. WILSON,
 MICHAEL L. SKILLERN, DEREK P. FOLLIS,
 JAMES L. CROWSER, OSCAR H. ORTEGON
 SR., RONALD L. DAVISON, THERESA CURRY
 DAN SPJUT, E.L. WHITAKER,
 FRANCES ORTIZ, THOMAS P. NULL

VS.

CITY OF HOUSTON

IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

334
____ JUDICIAL COURT**PLAINTIFFS' ORIGINAL PETITION**

COMES NOW, Plaintiffs, GLENN SHEPHERD, THOMAS SPJUT, GREGORY D. BROWN, T.F. BIELSKI, TIMOTHY D. BAYNES, VICTOR S. GARZA, C.J. KLAUSNER, MITCHELL W. CRENSHAW, CHARLES D. HURLEY, SPENCER M. COKER, RAMUDO MANTALVO JR., J.D. WALTMON, RAY A. PEARSON, JERRY MONTGOMERY, JEFFREY A. OLESEN, ROGELIO RODRIGUEZ, RAMSEY VELEZ, DON SIMERLY, ANDREW J. WASHINGTON, CRAIG BIGGER, DONALD J. CULAK, RICHARD V. WILSON, MICHAEL L. SKILLERN, DEREK P. FOLLIS, JAMES L. CROWSER, OSCAR H. ORTEGON SR., RONALD L. DAVISON, THERESA CURRY, DAN SPJUT, E.L. WHITAKER, FRANCES ORTIZ

11331520

Page 2 of 6

and THOMAS P. NULL and file this their Original Petition c
Houston (hereinafter referred to as "The City") and in supp
the following:

: City of

ie court

I
PARTIES

Plaintiffs are all residents of Harris County, Texas.

Defendant The City of Houston, is a municipality of Harris County. The incident made the basis of this suit arose in whole or in part out of business transacted in Texas by this Defendant. Service upon The City of Houston can be made upon the Mayor, Bill White at his office located at 900 Bagby, Houston, Texas 77002. The Clerk is requested to issue citation at this time.

II
DISCOVERY TRACK

Plaintiffs intend to conduct discovery under level 3 as provided in Rule 190 of the Texas Rules of Civil Procedure.

III
VENUE

The controversy relating to the above entitled and numbered cause of action falls within this Court's general jurisdiction, and the amount in controversy in this case exceeds the Court's minimum jurisdictional limits. Venue is proper in this case since the Plaintiffs are residents of Harris County, Texas and the basis of the cause of action brought by the Plaintiffs arose in Harris County, Texas.

IV
PLAINTIFF'S INDIVIDUAL CAUSES OF ACTION

The Plaintiffs are employees of the named Defendant. Plaintiffs are Houston Police Officers who hold the rank of Sergeant and above. In June of 2001, Plaintiffs agreed , by and through a meet

and confer agreement, that their positions would be classified as "Exempt" for the purposes of overtime. In exchange for this agreement, Plaintiffs were allowed to claim Exempt Time Compensation. Exempt Time Compensation was valuable to the Plaintiffs because it impacted their retirement compensation favorably. In July of 2004, The City informed the Plaintiffs that the meet and confer agreement would no longer be honored by The City starting on August 23, 2004. The City announced unilaterally that Plaintiffs would no longer be eligible for Exempt Time Compensation and would instead be paid overtime for hours worked over 40 hours a week. But for the meet and confer agreement, the Plaintiffs would have been eligible for overtime compensation for hours worked over 40 per week since June of 2001 pursuant to the Fair Labor Standards Act. The rejection of the meet and confer agreement and the loss of the eligibility for Exempt Time Compensation results in the Plaintiffs losing the benefit of enhancing their retirement benefits and the loss of overtime compensation for the time period of June 2001 to August 23, 2004. Plaintiffs all worked over 40 hours a week between June of 2001 and August 23, 2004. Plaintiffs were not paid overtime in accordance with the Fair Labor Standards Act during this time period. The loss of the continued ability to claim Exempt Time Compensation until the time of retirement renders the consideration for the meet and confer agreement valueless to the Plaintiffs. Defendant's conduct is in violation of the Fair Labor Standards Act (FLSA), which requires non-exempt employees to be compensated for their overtime work. See 29 U.S.C. 207(a). Plaintiffs are non-exempt employees who have been denied overtime pay as required by law, and file this action to recover unpaid overtime compensation owed to them for the three year period prior to August 23, 2004. At all material times, Defendant has been an employer within the meaning of 3(d) of the FLSA. 29 U.S.C. 203(d). At all material times, Defendant has been an enterprise within the meaning of 3(r) of the

FLSA. 29 U.S.C. 203(r). At all material times, Plaintiffs were individual employees who were engaged in commerce or in the production of goods for commerce as required by 29 USC 206-207. Defendant's method of paying Plaintiffs was not based on a good faith and reasonable belief that its conduct was in compliance with the FLSA.

V
CAUSES OF ACTION

The named Defendant's refusal to pay overtime is a violation of the Fair Labor Standards Act including but not limited to 29 U.S.C. 206,207 and 215(a) (3). None of the exceptions provided by the federal statutes regulating the duty of employers to pay overtime at a rate not less than one and a half times the regular rate at which its employees are employed are applicable to the Defendant or the Plaintiffs.

VI
DAMAGES AND REMEDIES SOUGHT

Plaintiffs individually and on behalf of all similarly situated employees seek all statutory, common law and equitable remedies to which they are entitled including but not limited to the following:

- a. Back Pay for unpaid overtime;
- b. Liquidated Damages;
- c. Attorney's Fees and Costs of Court;
- d. Injunctive Relief Prohibiting any retaliation against Plaintiffs who are presently employed by the Defendant both during the pendency of this litigation and after the conclusion of this litigation. Plaintiffs pray that the Defendant be enjoined from any form of retaliation against presently employed Plaintiffs including but not limited to, termination, reduction in wage, reduction

of hours worked, harassment, intimidation, threats or actions taken concerning the immigration status of the Plaintiffs or any other activity designed to cause an adverse effect upon the Plaintiffs in an effort to cause the Plaintiffs to abandon or compromise their claims;

e. Injunctive relief commanding the Defendant to comply fully with the Fair Labor Standards Act as it applies to all employees in the future.

VIII
JURY DEMAND

Plaintiffs respectfully request a trial by jury.


IX
CONDITIONS PRECEDENT

All conditions precedent either have occurred or have been performed prior to the filing of this action.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray that the Defendant be cited and caused to appear before this court and upon full trial of all issues that Plaintiffs be accorded full relief including but not limited to over time back pay, liquidated damages, attorney's fees and court costs, injunctive relief, pre-judgment and post judgement interest and any other relief or remedy to which they prove they are entitled.

Respectfully Submitted,

THE KERENSKY LAW FIRM



MICHAEL KERENSKY

SBN: 11331500

5300 Memorial, Suite 950

Houston, Texas 77007

(713)522-8686: Telephone

(713)522-6925: Telecopier

Jeffrey Marsh - with permission mu
JEFFREY-MARSH

ATTORNEYS FOR THE PLAINTIFFS

CAUSE NO. 200524125

RECEIPT NO. 227048
04-11-2005

50.00

CO1

TR # 71900493

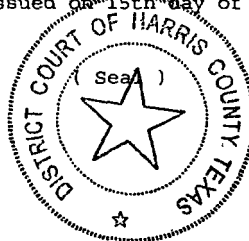
PLAINTIFF: SHEPHERD, GLENN
vs.
DEFENDANT: CITY OF HOUSTONIn The 334th
Judicial District Court
of Harris County, Texas
334TH DISTRICT COURT
Houston, TX

CITATION

THE STATE OF TEXAS
County of HarrisTO: CITY OF HOUSTON, TEXAS
900 BAGBY HOUSTON, TX 77002Attached is a copy of PLAINTIFF'S ORIGINAL PETITIONThis instrument was filed on the 11th day of April, 2005, in the above cited cause number and court. The instrument attached describes the claim against you.

YOU HAVE BEEN SUED. You may employ an attorney. If you or your attorney do not file a written answer with the District Clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of 20 days after you were served this citation and petition, a default judgment may be taken against you.

TO OFFICER SERVING:

This citation was issued on 15th day of April, 2005, under my hand and seal of said Court.Issued at request of:
KERENSKY, MICHAEL
5300 MEMORIAL #950
HOUSTON, TX 77007
Tel: (713) 522-8686
Bar No.: 11331500CHARLES BACARISSE, District Clerk
Harris County, Texas
201 Fannin Houston, Texas 77002
(P.O. Box 4651, Houston, Texas 77210)BY Madelyn Braden
Deputy BRADEN, MADELYN MARI 4JU/RGX/7164866

OFFICER/AUTHORIZED PERSON RETURN

CONSTABLE'S RETURN

Came to hand on the 19 day of APRIL, A.D. 2005 at 944 o'clock A M.,and executed in Harris County, Texas, by delivering to each of the within named defendants, in person, a true copy of this CITATIONPLAINTIFF'S ORIGINAL PETITION

at the following times and places, to-wit:

NAME By Summoning City of Houston By
DELIVERING TO MAYOR BILL WHITE By
DELIVERING TO ANNA RUSSELL, City SECRETARY.

DATE			TIME			ADDRESS OF SERVICE
Month	Day	Year	Hour	Min.	Sec.	
4	19	2005	2	20	Pm	900 Bagby, Houston, TX 77002

FEES - Serving

1 Y 50.00

JACK F. ABERCIA

Commission Expires No. 1, Harris County, Texas

By John TC67 Deputy

CAUSE NO. 2005-24125

GLENN SHEPHERD, THOMAS SPJUT, §
 GREGORY D. BROWN, T.F. BIELSKI, §
 TIMOTHY D. BAYNES, VICTOR S. §
 GARZA, C.J. KLAUSNER, MITCHELL W. §
 CRENSHAW, CHARLES D. HURLEY, §
 SPENCER M. COKER, RAMUDO §
 MANTALVO JR., J.D. WALTMON, RAY §
 A. OLESEN, ROGELIO RODRIGUEZ, §
 RAMSEY VELEZ, DON SIMERLY, §
 ANDREW J. WASHINGTON, CRAIG §
 BIGGER, DONALD J. CULAK, RICHARD §
 V. WILSON, MICHAEL L. SKILLERN, §
 DEREK P. FOLLIS, JAMES L. CROWSER §
 OSCAR H. ORTEGON SR., RONALD L. §
 DAVISON, THERESA CURRY, DAN §
 SPJUT, E.L. WHITAKER, FRANCES §
 ORTIZ, THOMAS P. NULL §

Plaintiffs,

VS.

THE CITY OF HOUSTON, §
Defendant. §

91 :6 H2 91 AVH 50
 IN THE DISTRICT COURT
 OF HARRIS COUNTY, TEXAS

334TH JUDICIAL DISTRICT

DEFENDANT'S AFFIRMATIVE DEFENSES AND ANSWER

TO THE HONORABLE JUDGE OF THE SAID COURT:

COMES NOW, the City of Houston ("City"), and files Defendant's Affirmative Defenses and Answer to Plaintiffs' Original Petition and would show the court as follows:

Affirmative Defenses

First Defense

The City affirmatively pleads and/or claims all of the exceptions and exemptions from, and limitations on liability provided by the Texas Tort Claims Act, Section 101.001 et. seq., Texas Civil Practice and Remedies Code, including the notice requirement of Section 101.001 thereof.

ENTERED
 67204440

2.1

Second Defense

The City of Houston is entitled to Governmental immunity against any claim that is not specifically allowed under statutory action.

General Denial

Pursuant to Tex.R.Civ.P. 92, Defendant denies each and every allegation contained in Plaintiffs' Original Petition and demands strict proof thereof.

Prayer

WHEREFORE, PREMISES CONSIDERED, Defendant prays that Plaintiffs take nothing by this suit and that the Petition be dismissed and Defendant be awarded its costs, and such other relief at law and in equity to which it may be justly entitled.

Respectfully submitted,

ARTURO G. MICHEL
City Attorney

CONSTANCE K. ACOSTA
Senior Assistant City Attorney

By: 

MARCUS L. DOBBS
Senior Assistant City Attorney
SBN 05921500
P.O. Box 1562
Houston, TX 77251
(713) 247-1517 (Voice)
(713) 247-1017 (FAX)
ATTORNEY-IN-CHARGE FOR
DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Defendant's Affirmative Defenses and Answer has been served upon Michael Kerensky, The Kerensky Law Firm, 5300 Memorial, Suite 950, Houston, Texas 77007 by depositing a copy of same in the U. S. Mail, certified return receipt requested, on 16th day of May 2005.



MARCUS L. DOBBS

FILED: 04/11/2005

GENERAL ORDER OF THE COURT 334TH

2005-24125

SHEPHERD, GLENN PLAINTIFFS

KERENSKY, MICHAEL

Attorney

NATURE OF ACTION

DAMAGES (OTH)

VS.

CITY OF HOUSTON

DEFENDANTS

Attorney

SURETIES ON COST BOND:

Jury Fee Paid By:

SETTINGS

TAB 2

CAUSE NO. 200524125

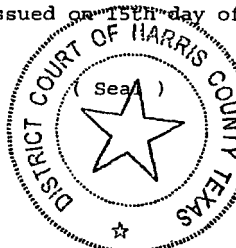
RECEIPT NO. 227048
04-11-200550.00 COL
TR # 71900493PLAINTIFF: SHEPHERD, GLENN
vs.
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Houston, TX

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THE STATE OF TEXAS
County of HarrisTO: CITY OF HOUSTON, SERVING THE MAYOR BILL WHITE
900 BAGBY HOUSTON, TX 77002Attached is a copy of PLAINTIFF'S ORIGINAL PETITIONThis instrument was filed on the 11th day of April, 2005, in the above cited cause number and court. The instrument attached describes the claim against you.

YOU HAVE BEEN SUED, You may employ an attorney. If you or your attorney do not file a written answer with the District Clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of 20 days after you were served this citation and petition, a default judgment may be taken against you.

TO OFFICER SERVING:

This citation was issued on 15th day of April, 2005, under my hand and seal of said Court.Issued at request of:
KERENSKY, MICHAEL
5300 MEMORIAL #950
HOUSTON, TX 77007
Tel: (713) 522-8686
Bar No.: 11331500CHARLES BACARISSE, District Clerk
Harris County, Texas
201 Fannin Houston, Texas 77002
(P.O. Box 4651, Houston, Texas 77210)

BY

Deputy BRADEN, MADELYN MARI 4JU/RGX/7164866

OFFICER/AUTHORIZED PERSON RETURN

CONSTABLE'S RETURN

Came to hand on the 19 day of APRIL A.D. 2005 at 944 o'clock A M.and returned in Harris County, Texas, by delivering to each of the within named defendants, in person, a true copy of this CITATIONPLAINTIFF'S ORIGINAL PETITION

at the following times and places, to-wit:

NAME By Summoning City of Houston By
DELIVERING TO MAYOR BILL WHITE By
DELIVERING TO ANNA RUSSELL, City SECRETARY.

DATE			TIME			ADDRESS OF SERVICE
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4	19	2005	2	20	Pm	900 Bagby, Houston, TX 77002

FEES: Serving 1 50.00

JACK F. ABERCIA

Constable, Precinct No. 1, Harris County, Texas

By

John A. Abercia 1067 Deputy

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

GLENN SHEPHERD, THOMAS SPJUT,
GREGORY D. BROWN, T.F. BIELSKI,
TIMOTHY D. BAYNES, VICTOR S.
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OSCAR H. ORTEGON SR., RONALD L.
DAVISON, THERESA CURRY, DAN
SPJUT, E.L. WHITAKER, FRANCES
ORTIZ, THOMAS P. NULL

Plaintiffs,

VS.

THE CITY OF HOUSTON,
Defendant.

CIVIL ACTION NO.

**PROOF OF SERVICE OF NOTICE TO ADVERSE PARTY
OF REMOVAL TO FEDERAL COURT**

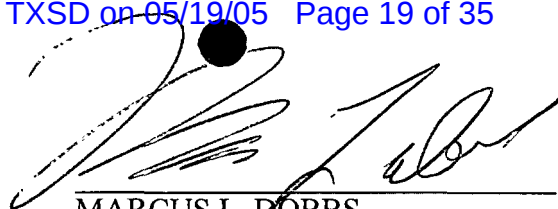
Marcus L. Dobbs certifies and declares as follows:

I am over the age of 18 years and not a party to this action. My business address is City of Houston Legal Department, P. O. Box 1562, Houston, Texas 77251, which is located in the city, county and state where the mailing described below took place.

On May 19, 2005, I deposited in the United States Mail at Houston, Texas, a copy of the Notice to Adverse Party of Removal to Federal Court a copy of which is attached to this Certificate.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 19, 2005.



MARCUS L. DOBBS
Senior Assistant City Attorney
SBN 05921500
P.O. Box 1562
Houston, TX 77251
(713) 247-1517 (Voice)
(713) 247-1017 (FAX)

ATTORNEY-IN-CHARGE FOR
DEFENDANT


OF COUNSEL:

ARTURO G. MICHEL
City Attorney

CONSTANCE K. ACOSTA
Senior Assistant City Attorney

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Defendant City of Houston's Proof of Service of Notice to Adverse Party of Removal to Federal Court has been forwarded to Michael Kerensky, The Kerensky Law Firm, 5300 Memorial, Suite 950, Houston, Texas 77007, by United States mail, certified, return receipt requested, on the 19th day of May, 2005.



MARCUS L. DOBBS

H:\DOBBS\LAWSUITS\SHEPHERD\REMOVAL.WPD

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

GLENN SHEPHERD, THOMAS SPJUT,
GREGORY D. BROWN, T.F. BIELSKI,
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Plaintiffs,

VS.

THE CITY OF HOUSTON,
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CIVIL ACTION NO.

LIST OF ALL COUNSEL OF RECORD

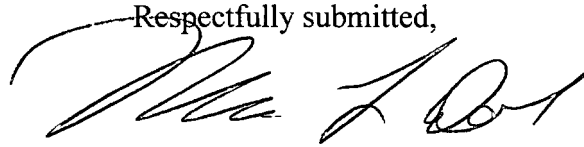
COUNSEL FOR PLAINTIFF:

MICHAEL KERENSKY
The Kerensky Law Firm
5300 Memorial, Suite 950
Houston, Texas 77007
(713) 522-8686 Telephone; (713) 522-6925 Fax

COUNSEL FOR DEFENDANT:

MARCUS L. DOBBS
Senior Assistant City Attorney
SBN 05921500
P.O. Box 1562
Houston, TX 77251
(713) 247-1517 (Voice); (713) 247-1017 (FAX)

Respectfully submitted,



MARCUS L. DOBBS
Senior Assistant City Attorney
SBN 05921500
P.O. Box 1562
Houston, TX 77251
(713) 247-1517 (Voice)
(713) 247-1017 (FAX)

OF COUNSEL:

ARTURO G. MICHEL
City Attorney

CONSTANCE K. ACOSTA
Senior Assistant City Attorney

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Defendant City of Houston's List of All Counsel of Record has been forwarded to Michael Kerensky, The Kerensky Law Firm, 5300 Memorial, Suite 950, Houston, Texas 77007, by United States mail, certified, return receipt requested, on the 19th day of May, 2005.

H:\DOBBS\LAWSUITS\SHEPHERD\REMOVAL WPD



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

GLENN SHEPHERD, THOMAS SPJUT,
GREGORY D. BROWN, T.F. BIELSKI,
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ORTIZ, THOMAS P. NULL

Plaintiffs,

VS.

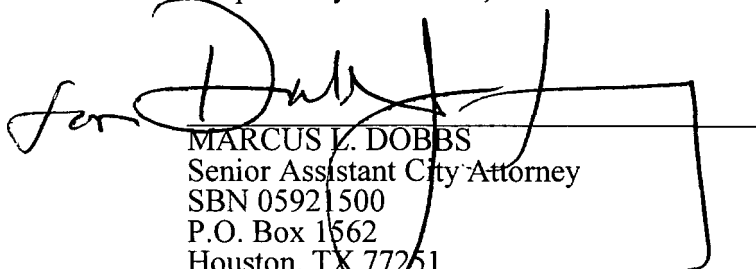
THE CITY OF HOUSTON,
Defendant.

CIVIL ACTION NO.

INDEX OF STATE COURT DOCUMENTS

1. Plaintiff's Original Petition
2. Citation
3. Affirmative Defenses and Answer
4. General Order of the Court Sheet (docket sheet)

Respectfully submitted,


MARCUS L. DOBBS
Senior Assistant City Attorney
SBN 05921500
P.O. Box 1562
Houston, TX 77251
(713) 247-1517 (Voice)
(713) 247-1017 (FAX)

OF COUNSEL:


OF COUNSEL:

ARTURO G. MICHEL.
City Attorney

CONSTANCE K. ACOSTA
Senior Assistant City Attorney

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Defendant City of Houston's Index of State Court Documents has been forwarded to Michael Kerensky, The Kerensky Law Firm, 5300 Memorial, Suite 950, Houston, Texas 77007, by United States mail, certified, return receipt requested, on the 19th day of May, 2005.



MARCUS L. DOBBS

H:\DOBBS\LAWSUITS\SHEPHERD\REMOVAL.WPD

2005-24125

CAUSE NO. _____

ASSESSED	Page 1 of 6
ENTERED	
VERIFIED	

GLENN SHEPHERD, THOMAS SPJUT, §
 GREGORY D. BROWN, T.F. BIELSKI, §
 TIMOTHY D. BAYNES, VICTOR S. GARZA, §
 C.J. KLAUSNER, MITCHELL W. §
 CRENSHAW, CHARLES D. HURLEY, §
 SPENCER M. COKER, RAMUDO §
 MANTALVO JR., J.D. WALTMON, §
 RAY A. PEARSON, JERRY MONTGOMERY, §
 JEFFREY A. OLESEN, ROGELIO RODRIGUEZ, §
 RAMSEY VELEZ, DON SIMERLY, §
 ANDREW J. WASHINGTON, CRAIG BIGGER, §
 DONALD J. CULAK, RICHARD V. WILSON, §
 MICHAEL L. SKILLERN, DEREK P. FOLLIS, §
 JAMES L. CROWSER, OSCAR H. ORTEGON §
 SR., RONALD L. DAVISON, THERESA CURRY §
 DAN SPJUT, E.L. WHITAKER, §
 FRANCES ORTIZ, THOMAS P. NULL §

VS.

CITY OF HOUSTON

IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

334

JUDICIAL COURT

PLAINTIFFS' ORIGINAL PETITION

COMES NOW, Plaintiffs, GLENN SHEPHERD, THOMAS SPJUT, GREGORY D. BROWN, T.F. BIELSKI, TIMOTHY D. BAYNES, VICTOR S. GARZA, C.J. KLAUSNER, MITCHELL W. CRENSHAW, CHARLES D. HURLEY, SPENCER M. COKER, RAMUDO MANTALVO JR., J.D. WALTMON, RAY A. PEARSON, JERRY MONTGOMERY, JEFFREY A. OLESEN, ROGELIO RODRIGUEZ, RAMSEY VELEZ, DON SIMERLY, ANDREW J. WASHINGTON, CRAIG BIGGER, DONALD J. CULAK, RICHARD V. WILSON, MICHAEL L. SKILLERN, DEREK P. FOLLIS, JAMES L. CROWSER, OSCAR H. ORTEGON SR., RONALD L. DAVISON, THERESA CURRY, DAN SPJUT, E.L. WHITAKER, FRANCES ORTIZ

11331580

Page 2 of 6

and THOMAS P. NULL and file this their Original Petition c
Houston (hereinafter referred to as "The City") and in supp
the following:

: City of

ie court

I
PARTIES

Plaintiffs are all residents of Harris County, Texas.

Defendant The City of Houston, is a municipality of Harris County. The incident made the basis of this suit arose in whole or in part out of business transacted in Texas by this Defendant. Service upon The City of Houston can be made upon the Mayor, Bill White at his office located at 900 Bagby, Houston, Texas 77002. The Clerk is requested to issue citation at this time.

II
DISCOVERY TRACK

Plaintiffs intend to conduct discovery under level 3 as provided in Rule 190 of the Texas Rules of Civil Procedure.

III
VENUE

The controversy relating to the above entitled and numbered cause of action falls within this Court's general jurisdiction, and the amount in controversy in this case exceeds the Court's minimum jurisdictional limits. Venue is proper in this case since the Plaintiffs are residents of Harris County, Texas and the basis of the cause of action brought by the Plaintiffs arose in Harris County, Texas.

IV
PLAINTIFF'S INDIVIDUAL CAUSES OF ACTION

The Plaintiffs are employees of the named Defendant. Plaintiffs are Houston Police Officers who hold the rank of Sergeant and above. In June of 2001, Plaintiffs agreed , by and through a meet

and confer agreement, that their positions would be classified as "Exempt" for the purposes of overtime. In exchange for this agreement, Plaintiffs were allowed to claim Exempt Time Compensation. Exempt Time Compensation was valuable to the Plaintiffs because it impacted their retirement compensation favorably. In July of 2004, The City informed the Plaintiffs that the meet and confer agreement would no longer be honored by The City starting on August 23, 2004. The City announced unilaterally that Plaintiffs would no longer be eligible for Exempt Time Compensation and would instead be paid overtime for hours worked over 40 hours a week. But for the meet and confer agreement, the Plaintiffs would have been eligible for overtime compensation for hours worked over 40 per week since June of 2001 pursuant to the Fair Labor Standards Act. The rejection of the meet and confer agreement and the loss of the eligibility for Exempt Time Compensation results in the Plaintiffs losing the benefit of enhancing their retirement benefits and the loss of overtime compensation for the time period of June 2001 to August 23, 2004. Plaintiffs all worked over 40 hours a week between June of 2001 and August 23, 2004. Plaintiffs were not paid overtime in accordance with the Fair Labor Standards Act during this time period. The loss of the continued ability to claim Exempt Time Compensation until the time of retirement renders the consideration for the meet and confer agreement valueless to the Plaintiffs. Defendant's conduct is in violation of the Fair Labor Standards Act (FLSA), which requires non-exempt employees to be compensated for their overtime work. See 29 U.S.C. 207(a). Plaintiffs are non-exempt employees who have been denied overtime pay as required by law, and file this action to recover unpaid overtime compensation owed to them for the three year period prior to August 23, 2004. At all material times, Defendant has been an employer within the meaning of 3(d) of the FLSA. 29 U.S.C. 203(d). At all material times, Defendant has been an enterprise within the meaning of 3(r) of the

FLSA. 29 U.S.C. 203(r). At all material times, Plaintiffs were individual employees who were engaged in commerce or in the production of goods for commerce as required by 29 USC 206-207. Defendant's method of paying Plaintiffs was not based on a good faith and reasonable belief that its conduct was in compliance with the FLSA.

V
CAUSES OF ACTION

The named Defendant's refusal to pay overtime is a violation of the Fair Labor Standards Act including but not limited to 29 U.S.C. 206,207 and 215(a) (3). None of the exceptions provided by the federal statutes regulating the duty of employers to pay overtime at a rate not less than one and a half times the regular rate at which its employees are employed are applicable to the Defendant or the Plaintiffs.

VI
DAMAGES AND REMEDIES SOUGHT

Plaintiffs individually and on behalf of all similarly situated employees seek all statutory, common law and equitable remedies to which they are entitled including but not limited to the following:

- a. Back Pay for unpaid overtime;
- b. Liquidated Damages;
- c. Attorney's Fees and Costs of Court;
- d. Injunctive Relief Prohibiting any retaliation against Plaintiffs who are presently

employed by the Defendant both during the pendency of this litigation and after the conclusion of this litigation. Plaintiffs pray that the Defendant be enjoined from any form of retaliation against presently employed Plaintiffs including but not limited to, termination, reduction in wage, reduction

of hours worked, harassment, intimidation, threats or actions taken concerning the immigration status of the Plaintiffs or any other activity designed to cause an adverse effect upon the Plaintiffs in an effort to cause the Plaintiffs to abandon or compromise their claims;

e. Injunctive relief commanding the Defendant to comply fully with the Fair Labor Standards Act as it applies to all employees in the future.

VIII
JURY DEMAND

Plaintiffs respectfully request a trial by jury.

IX
CONDITIONS PRECEDENT

All conditions precedent either have occurred or have been performed prior to the filing of this action.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray that the Defendant be cited and caused to appear before this court and upon full trial of all issues that Plaintiffs be accorded full relief including but not limited to over time back pay, liquidated damages, attorney's fees and court costs, injunctive relief, pre-judgment and post judgement interest and any other relief or remedy to which they prove they are entitled.

Respectfully Submitted,

THE KERENSKY LAW FIRM

A handwritten signature in black ink, appearing to read "Michael Kerensky", written over a horizontal line.

MICHAEL KERENSKY

SBN: 11331500

5300 Memorial, Suite 950

Houston, Texas 77007

(713)522-8686: Telephone

(713)522-6925: Telecopier

Jeffrey Marsh - with permission Mu
JEFFREY MARSH

ATTORNEYS FOR THE PLAINTIFFS

CAUSE NO. 200524125

RECEIPT NO. 227048
04-11-2005

50.00

CO1

TR # 71900493

PLAINTIFF: SHEPHERD, GLENN
vs.
DEFENDANT: CITY OF HOUSTONIn The 334th
Judicial District Court
of Harris County, Texas
334TH DISTRICT COURT
Houston, TX

CITATION

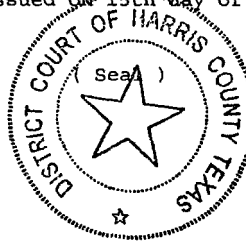
THE STATE OF TEXAS
County of HarrisTO: CITY OF HOUSTON, TEXAS
900 BAGBY ST HOUSTON, TX 77002Attached is a copy of PLAINTIFF'S ORIGINAL PETITIONThis instrument was filed on the 11th day of April, 2005, in the above cited cause number and court. The instrument attached describes the claim against you.

YOU HAVE BEEN SUED, You may employ an attorney. If you or your attorney do not file a written answer with the District Clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of 20 days after you were served this citation and petition, a default judgment may be taken against you.

TO OFFICER SERVING:

This citation was issued on 15th day of April, 2005, under my hand and seal of said Court.

Issued at request of:

KERENSKY, MICHAEL
5300 MEMORIAL #950
HOUSTON, TX 77007
Tel: (713) 522-8686
Bar No.: 11331500CHARLES BACARISSE, District Clerk
Harris County, Texas
201 Fannin Houston, Texas 77002
(P.O. Box 4651, Houston, Texas 77214)

BY

Deputy BRADEN, MADELYN MARI 4JU/RGX/7164866

OFFICER/AUTHORIZED PERSON RETURN

CONSTABLE'S RETURN

Came to hand on the 19 day of APRIL A.D. 2005 at 944 o'clock A M.

and executed in Harris County, Texas, by delivering to each of the within named defendants, in person, a true copy of this

PLAINTIFF'S ORIGINAL PETITION

at the following times and places, to-wit:

NAME By Summoning City of Houston By
 DELIVERING TO MAYOR BILL WHITE By
 DELIVERING TO ANNA RUSSELL, City SECRETARY.

DATE			TIME			ADDRESS OF SERVICE
Month	Day	Year	Hour	Min.	M	
4	19	2005	2	20	Pm	900 Bagby, Houston, TX 77002

FEES - Serving

1 x 50.00

JACK F. ABERCIA

Constable, Precinct No. 1, Harris County, Texas

By

Deputy

CAUSE NO. 2005-24125

GLENN SHEPHERD, THOMAS SPJUT, §
 GREGORY D. BROWN, T.F. BIELSKI, §
 TIMOTHY D. BAYNES, VICTOR S. §
 GARZA, C.J. KLAUSNER, MITCHELL W. §
 CRENSHAW, CHARLES D. HURLEY, §
 SPENCER M. COKER, RAMUDO §
 MANTALVO JR., J.D. WALTMON, RAY §
 A. OLESEN, ROGELIO RODRIGUEZ, §
 RAMSEY VELEZ, DON SIMERLY, §
 ANDREW J. WASHINGTON, CRAIG §
 BIGGER, DONALD J. CULAK, RICHARD §
 V. WILSON, MICHAEL L. SKILLERN, §
 DEREK P. FOLLIS, JAMES L. CROWSER §
 OSCAR H. ORTEGON SR., RONALD L. §
 DAVISON, THERESA CURRY, DAN §
 SPJUT, E.L. WHITAKER, FRANCES §
 ORTIZ, THOMAS P. NULL §

Plaintiffs,

VS.

THE CITY OF HOUSTON, §
Defendant. §

91 :6 Hg 91 AVWSO
 IN THE DISTRICT COURT
 OF HARRIS COUNTY, TEXAS

334TH JUDICIAL DISTRICT

DEFENDANT'S AFFIRMATIVE DEFENSES AND ANSWER

TO THE HONORABLE JUDGE OF THE SAID COURT:

COMES NOW, the City of Houston ("City"), and files Defendant's Affirmative Defenses and Answer to Plaintiffs' Original Petition and would show the court as follows:

Affirmative Defenses

First Defense

The City affirmatively pleads and/or claims all of the exceptions and exemptions from, and limitations on liability provided by the Texas Tort Claims Act, Section 101.001 et. seq., Texas Civil Practice and Remedies Code, including the notice requirement of Section 101.001 thereof.

ENTERED
 07204440

Second Defense

The City of Houston is entitled to Governmental immunity against any claim that is not specifically allowed under statutory action.

General Denial

Pursuant to Tex.R.Civ.P. 92, Defendant denies each and every allegation contained in Plaintiffs' Original Petition and demands strict proof thereof.

Prayer

WHEREFORE, PREMISES CONSIDERED, Defendant prays that Plaintiffs take nothing by this suit and that the Petition be dismissed and Defendant be awarded its costs, and such other relief at law and in equity to which it may be justly entitled.

Respectfully submitted,

ARTURO G. MICHEL
City Attorney

CONSTANCE K. ACOSTA
Senior Assistant City Attorney

By: 

MARCUS L. DOBBS
Senior Assistant City Attorney
SBN 05921500
P.O. Box 1562
Houston, TX 77251
(713) 247-1517 (Voice)
(713) 247-1017 (FAX)
ATTORNEY-IN-CHARGE FOR
DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Defendant's Affirmative Defenses and Answer has been served upon Michael Kerensky, The Kerensky Law Firm, 5300 Memorial, Suite 950, Houston, Texas 77007 by depositing a copy of same in the U. S. Mail, certified return receipt requested, on 16th day of May 2005.



MARCUS L. DOBBS

2005-24125

FILED: 04/11/2005

GENERAL ORDER OF THE COURT 334TH

SHEPHERD, GLENN
PLAINTIFFS

KERENSKY, MICHAEL

Attorney

NATURE OF ACTION

DAMAGES (OTH)

VS.

CITY OF HOUSTON

DEFENDANTS

Attorney

SURETIES ON COST BOND:

Jury Fee Paid By:

SETTINGS

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I (a) PLAINTIFFS Glenn Shepherd, Thomas Spjut,
Gregory D. Brown, T.F. Bielski,
Timothy D. Baynes, Victor S. Garza,
C.J. Klausner, Mitchell W. Crenshaw,
Charles D. Hurley, Spencer M.
Coker, Ramudo Mantalvo Jr., et. al.

DEFENDANTS

The City of Houston

H 05 - 1793

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Harris
(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT Harris
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)
Michael Kerensky
The Kerensky Firm
5300 Memorial, Ste. 950
Houston, Texas 77007
(713) 522-8686; (713) 522-6925 Fax

ATTORNEYS (IF KNOWN)
Marcus L. Dobbs
City of Houston, Legal Department
P.O. Box 1562
Houston, Texas 77251 ((713) 247-1517

II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.)

DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY

FLSA, 29 USC 201, et. seq.

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury—Med Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HRA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSDI Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Other	LABOR <input checked="" type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Labor Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Legislation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

VI. ORIGIN

(PLACE AN X IN ONE BOX ONLY)

- ☐ 1 Original Proceeding
☒ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 ☐

DEMAND \$

Check YES only if demanded in complaint:
JURY DEMAND: ☒ YES ☐ NO

VIII. RELATED CASE(S) IF ANY (See instructions):

JUDGE _____ DOCKET NUMBER _____

DATE

5-19-05

SIGNATURE OF ATTORNEY OF RECORD

[Signature]